

# MASON'S MINNESOTA STATUTES

1927

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THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-  
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT  
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED  
BY THE SUBSEQUENT LEGISLATION OF 1925  
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES  
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE  
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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milk, cream, ice cream or butter, or to deface, erase, obliterate, cover up or otherwise remove or conceal any such name, mark or device on any such receptacle, or to buy, sell, give, take, dispose of in any way, or traffic in any receptacle bearing any such name, mark or device. Any person offending against any provision of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than ten days nor more than ninety days, or by a fine of not less than ten dollars or more than one hundred dollars, and each such receptacle so unlawfully dealt with as herein set out shall be deemed and held to be a separate offense. ('05 c. 340 § 2) [6952]

**8332. Receptacles to be delivered on demand—Penalty**—Any person having in possession or under control any receptacle bearing any name, mark or device recorded as provided in section one [8330] of this act, and not holding a written transfer or bill of sale therefor from the person named in the certificate issued by the secretary of state as provided in section one [8330] of this act or other authority in writing from such person, upon demand shall deliver such receptacle to the person named in such certificate or to the authorized agent of such person; and any person failing or refusing to so deliver the same when demanded shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be punished by imprisonment in the county jail for not less than ten days nor more than ninety days, or by a fine of not less than ten dollars nor more than one hundred dollars. ('05 c. 340 § 3) [6953]

**8333. Recovery of receptacles—Search warrant**—Whenever any person who has filed for record any such name, mark or device or who has acquired from such person in writing the ownership of such name, mark or device or the right to the exclusive use thereof, or anyone representing such person, shall make

oath before any magistrate that he has reason to believe and does believe that any receptacle bearing such name, mark or device is being unlawfully used or filled or had in possession by any person such magistrate shall thereupon issue a search warrant to discover and obtain such receptacle; and may also cause the person in whose possession such receptacle shall be found to be brought before him and shall then inquire into the circumstances of such possession, and if it shall be found that such person is guilty of violation of any section of this act he shall be punished as herein prescribed and the possession of the property taken upon such warrant shall be awarded to the owner thereof; but the remedy given by this section shall not be held to be exclusive, and offenders against any provision of this act may also be prosecuted as in case of other misdemeanors. ('05 c. 340 § 4) [6954]

**8334. Receptacle and other terms defined**—As used in this act, the term receptacle shall include not only bottles, siphons, tins, kegs, one-eighth barrels, quarter barrels, half barrels, barrels, boxes, cans and tubs, but all other receptacles used for holding any of the commodities in this act mentioned; the singular may include the plural and the plural may include the singular; the term person may include corporation; and the requirement for a written transfer, bill of sale, authority or consent means that it shall be signed by the person named in the certificate issued by the secretary of state as provided by section one [8330] of this act, or by a transferee claiming under a written transfer signed by such person or by an agent whose authority is in writing signed by such person or such transferee. ('05 c. 340 § 5) [6955]

**8335. Taking deposit**—The requiring or taking of any deposit for any purpose upon such receptacle shall not be deemed nor held to be a sale either optional or otherwise in any proceeding under this act. ('05 c. 340 § 6) [6956]

CHAPTER 66

HOMESTEAD EXEMPTION

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**8336. Dwelling place exempt—Exceptions**—The house owned and occupied by a debtor as his dwelling place, together with the land upon which it is situated to the amount hereinafter limited and defined, shall constitute the homestead of such debtor and his family, and shall be exempt from seizure or sale under legal process on account of any debt not lawfully charged thereon in writing, except such as are incurred for work or materials furnished in the construction, repair, or improvement of such homestead, or for services performed by laborers or servants. (3452) [6957]

**1. Nature**—A homestead is the place of residence or dwelling of its owner. It includes the house in which the owner lives and the customary appurtenances of a

house (10-154, 124; 15-116, 87; 21-101; 27-156, C; 318; 27-406, 7+824; 29-18, 11+119; 51-360, 53+805). It is not the interest or title of the claimant (27-406, 7+824).

The general rule is that homestead laws are to be liberally construed so as to advance the beneficial object and carry out the manifest purpose of the Legislature. 202+494.

Under our statute the homestead exemption is not alone for the husband and his protection but for the benefit of the wife and children as well. It is not only a privilege but an absolute right. 162-230, 202+494.

The homestead law is liberally construed for the benefit of the debtor. 165-295, 206+461.

Evidence showing that husband and wife had lived on land, although frequently absent, and had retained home there, leaving household goods and furniture, held to sustain order setting apart homestead to surviving widow. 166-492, 206+929.

Where a husband embezzles funds and appropriates to payment for labor and materials for the construction of a dwelling upon land owned by himself and his wife, as tenants in common, and claimed by them as their homestead, a constructive trust arises in favor of the injured party as to the dwelling. 210+889.

The fact that the husband and wife were owners of the land, as tenants in common, does not subject the wife's interest therein to levy on account of such trust. 210+889.

**2. Object and policy of statute**—2-90, 72; 7-513, 419; 21-101; 27-156, 6+618; 89-247, 94+677.

**3. Actual occupancy as home essential**—5-333, 264; 7-513, 419; 8-309, 272; 10-154, 124; 15-116, 87; 21-299; 23-435; 25-183; 28-13, 8+830; 47-13, 49+390; 71-108, 73+639.

4. No limit to value—11-475, 364; 21-299; 39-244, 39+321; 41-227, 43+52; 59-415, 61+456; 69-24, 71+919; 112-512, 128+833.

5. No limitations on use—If the property is actually used as a home it may be used for other purposes also (10-154, 124; 26-286, 3+341; 41-227, 43+52; 58-450, 60+23; 69-24, 71+919; 69-292, 72+119). It may be leased in part (10-154, 124; 26-286, 3+341; 41-227, 43+52).

6. Liberal construction—27-156, 6+618; 41-227, 43+52; 41-481, 43+376; 65-491, 67+1031.

7. Liens of mechanics and materialmen—74-366, 77+292; 76-226, 78+1113; 89-150, 94+438.

8. Debts due laborers or servants—93-267, 101+74.

9. Insolvent may acquire—An insolvent may acquire a homestead with non-exempt funds (41-227, 43+52; 41-481, 43+376). But a mere intent to occupy property as a homestead will not defeat a creditor's lien attaching prior to actual occupancy (23-435, 26-417, 4+813; 41-481, 43+376; 47-13, 49+390).

123-293, 143+720.

Declaration of mortgagor, since deceased, claiming homestead, as evidence (128-525, 151+416). Extent of homestead rights (134-478, 159+788). Homestead record title conveyed by husband to wife by unrecorded deeds, and by her leased, husband joining to tenant in possession, such possession is notice of her title (142-35, 170+708). Eighty acres of land and dwelling thereon occupied by married man, who had left his wife and children, living unlawfully with another woman, constituted his homestead (143-35, 172+912). Waiver of confession of judgment subjecting homestead to levy under execution (144-404, 175+683). Temporary removal (217 Fed. 163).

#### 10. Attachment.

That land is exempt as a homestead is not a ground for the dissolution of an attachment; and the order dissolving the attachment was not an adjudication that the homestead was on the land attached. 162-176, 202+711.

#### 11. Mechanics' Liens.

Since the amendment to the Constitution in 1888 (see Laws 1889, p. 1), homesteads are subject to mechanics' liens. 165-177, 206+164.

Marking off and grading a part of the homestead, and erecting a second dwelling house thereon, does not operate as a waiver of the homestead right in such tract, but constitutes an "improvement" of the homestead, for which mechanics' liens may be filed against it. 165-177, 206+164.

#### 12. Mortgage foreclosures.

Sale on mortgage foreclosure. 165-295, 206+461.

#### 13. Selection by Bankruptcy Court.

There having been no selection of a homestead, the bankruptcy court had jurisdiction to determine the portion of the two quarters which constituted the homestead. (Mason's Code 11:11). 162-176, 202+711.

#### 14. Alienation.

A married man, whose wife and children were living apart from him in a distant state, obtained a marriage license and went through a marriage ceremony with another woman, who believed his wife dead. They lived together as husband and wife until his death 29 years later. The wife knew of the marriage ceremony at the time. The husband some years later took title to a piece of land which he occupied until his death as his homestead. Two weeks before his death he made a deed of it, through a third person, to the woman with whom he lived. His wife did not join. It is held: The deed of his homestead by the husband, his wife not joining, was void under the statute. 157-266, 196+258.

#### 15. Estoppel to Claim.

The wife and children, though taking the legal title, might be equitably estopped by their conduct from claiming, as against a good-faith purchaser, that the deed did not pass title to the woman with whom the decedent lived, and from asserting their title against the purchaser. That the property was a homestead did not prevent the operation of an estoppel by conduct. 157-266, 196+258.

#### 16. Crops.

Crops growing on homestead are not exempt. 10 F. (2d) 747.

8337. Area, how limited—Such homestead may include any quantity of land not exceeding eighty acres, and not included in the laid out or platted portion of any incorporated city, village or borough. If it be within the laid out or platted portion of such incorporated place having five thousand inhabitants or over, its area shall not exceed one-third of an acre, and if it

be within the laid out or platted portion of such incorporated place containing fewer than five thousand inhabitants, the area so exempted shall not exceed one-half of an acre. (R. L. § 3453, amended '07 c. 335 § 1) [6958]

Exemption is measured by area, and quantity of land prescribed may be selected as such, notwithstanding part may be devoted to purposes other than that of dwelling place of owner (112-512, 128+833). Two separate 10-acre parcels, touching only at corners, between which is roadway, if owned, occupied, and cultivated as one farm, may constitute homestead, though residence and appurtenances are all on one tract (101-347, 112+273). Effect of enlargement of area by R. L. upon debts created prior thereto (115-508, 133+75; 182 Fed. 439). Divided ownership between husband and wife is not controlling against the right of homestead (136-258, 161+515).

Crops growing on homestead are not exempt. 10 F. (2d) 747.

8338. Existing exemption not affected by changes—As against debts which are not a lien upon such property the area of the homestead shall not be reduced or enlarged by reason of any change in the population of the place in which it is situated, by extending the limits of an incorporated place so as to include the same, or by the platting of surrounding or adjoining lands or the vacation of existing plats. And as against debts contracted prior to the taking effect of the Revised Laws, the homestead exemptions then established shall be neither enlarged nor diminished by the provisions of this chapter. (3454) [6959]

8339. Title may be in husband or wife—Equitable title exempt—If the debtor be married the homestead title may be vested in either spouse, and the exemption shall extend to the debts of either or of both. Any interest in the land, whether legal or equitable, shall constitute ownership, within the meaning of this chapter, and the dwelling house so owned and occupied shall be exempt, though situated on the land of another. (3455) [6960]

Ownership is essential (8-309, 272; 22-384; 34-258, 25+432). An equitable title is sufficient (21-101; 21-107; 23-454; 27-756, 6+618; 41-412, 43+90; 44-482, 47+53; 89-247, 94+677; 91-482, 98+453). An undivided interest is sufficient (27-406, 7+824. See 36-136, 30+458). A tenant for years has a sufficient interest (58-450, 60+23). No change in title affects the exemption if claimant retains the ownership (27-406, 7+824). House on land of another (see 12-108, 59; 51-360, 53+805). Nature of interest of one spouse in the homestead of the other (56-523, 58+156; 85-83, 88+419; 96-294, 104+969). Wife has interest, though legal title is in husband, and is entitled to quiet enjoyment (97-503, 106+955). Vendee's equitable interest in contract of sale is subject to homestead estate (123-483, 144+222). Ownership of separate parcel within single homestead area (136-258, 161+515). Judgment debtor's existing homestead rights of record in wife's name (139-295, 166+342).

162-176, 202+711, notes under §§ 8336, 8343; 162-230, 202+494, note under §§ 8336, 8340, 8341.

A homestead claimed by husband and wife may be in part on land owned by one and in part on land owned by the other. 162-176, 202+711.

8340. No alienation without consent of spouse—Exemptions—Such homestead exemption shall not extend to any mortgage lawfully obtained thereon, to any valid lien for taxes or assessments, or to any charge arising under the laws relating to laborers or materialmen's liens. But if the owner be married, no mortgage of the homestead, except for purchase money unpaid thereon, nor any sale or other alienation thereof, shall be valid without the signatures of both husband and wife. (3456) [6961]

The consent of both husband and wife is essential to the conveyance of a homestead (96-294, 104+969). A deed, a contract for a deed, or a mortgage other than for the purchase money, of a homestead, without the signature of the wife, is void (21-101; 21-107; 21-299; 23-454; 28-464, 10+775; 31-213, 17+341; 35-280, 28+510; 38-469, 38+370; 39-511, 40+830; 41-412, 43+90; 44-482, 47+53; 55-244, 56+817). It cannot be made the foundation of an action for damages against the husband (55-244, 56+817). Its covenants are not binding (39-511, 40+830). It does not become valid upon the premises ceasing to be a

homestead (21-299; 39-511, 40-830; 44-482, 47+53); nor by reason of a subsequent divorce (36-57, 29+674; 39-511, 40+830). A husband cannot waive the exemption without his wife joining (25-133. See 35-280, 28+510; 68-317, 71+393; 96-294, 104+969). A material alteration in a mortgage by the husband after the wife has signed it and without her consent renders the mortgage void (28-464, 10+775). It is sufficient if the wife merely signs the deed. It is not necessary that it be acknowledged and attested. A conveyance without the wife joining is void and no title can be acquired under it even by the subsequent bona fide purchasers (28-464, 468, 10+775). Conveyance without wife joining void, though she has abandoned him and is living in adultery (99-348, 109+593). Grant of perpetual easement for railroad right of way without wife joining void (110-518, 126+276). The consent of a wife is not essential to the assignment of a mortgage given by the husband prior to his marriage (63-269, 65+454). A conveyance of a homestead and other lands without the signature of the wife is not void as to the other lands (31-213, 17+341; 55-244, 56+817). The wife may be estopped by her conduct from asserting her want of assent to a conveyance (28-464, 10+775; 44-482, 47+53; 75-549, 78+242; 78-295, 80+1127. See 67-71, 69+626). After an abandonment of a homestead a husband may mortgage it without his wife joining (35-280, 28+510). If part of a homestead is taken under the power of eminent domain the husband may dispose of the award without the consent of his wife (31-239, 17+385). Where the signature of one of the spouses is obtained by fraud the conveyance may be set aside unless the grantee is innocent (36-437, 31+858; 75-279, 77+961). Where a wife joins her husband in a deed which is put in escrow to be delivered on the performance of certain conditions by the grantee she waives her homestead right (37-215, 33+781. See 75-549, 78+242). It is not necessary for the wife to join in the covenants of her husband's deed in order to bar her homestead interest (48-408, 51+379). The signature of the wife is not essential to the validity of a purchase money mortgage (15-512, 423; 23-454). Where A mortgaged his homestead to B, his wife not joining, and later, after a divorce, deeded the same to C, who agreed to assume the mortgage, it was held that C was estopped to question the validity of the mortgage (36-57, 29+674). A wife abandoning a homestead, cannot have partition thereof against her husband (96-294, 104+969).

G. S. 1894 § 5621 cited (97-484, 107+159).  
Deed, reserving life estate, unsigned by wife as to homestead, is void (124-335, 144+1094). As to mortgage not joined in by wife to homestead, prior judgment on issue of marriage, is inadmissible (128-525, 151+416). Wife joining husband in deeding his homestead as security for loan (122-419, 142+721). Agreement without wife's consent with town for road across homestead is void (133-128, 157+1039). Misdescription due to mutual mistake in deed to homestead joined in by both husband and wife may be reformed (129-290, 152+648). Estoppel to asserting invalidity of separate conveyances of homestead (133-261, 158+244). Contract for sale of homestead, jointly owned by husband and wife, made by wife alone, and thereafter confirmed by husband, is not invalid (138-171, 164+899; 142-36, 170+708; 143-38, 172+914). Six month lease is not an alienation (148-269, 181+579). Mortgage fraudulently representing himself as unmarried is estopped from asserting invalidity (150-242, 184+1021). Trust deed including homestead executed by husband and wife wherein was a latent ambiguity, parol evidence admissible (244 Fed. 914). 162-349, 202+733, note under § 8195; 165-38, 205+607; 165-158, 207+315.

Brothers held not partners in ownership of land and one married could claim homestead exemption, 298 Fed. 291.

Where the wife has been wrongfully induced by fraud or deception to release her homestead rights, either by her husband or by a third party, she is entitled, in a court of equity, to have such conveyance set aside and to be restored to her legal rights. 162-230, 202+494.

A wife, having executed a note and mortgage on the homestead and intrusted them to her husband without restrictions on their use, cannot resist foreclosure by denying her husband's authority to use the note and mortgage as security for credit given him by a bank on the faith thereof. 162-391, 203+227.

**8341. Exemption not lost by death or desertion**—If the owner shall die leaving a spouse or minor children constituting his family surviving, the homestead exemption shall not be affected by such death. And if a husband shall abscond, or otherwise desert his family, his wife and the minor children comprising such family may retain the homestead, with all the rights of owners therein. But they shall not have power to sell or mortgage the same, except in cases expressly provided for by law. (8457) [6962]

Upon the death of the spouse holding the fee title,

the surviving spouse takes the homestead right, not by any right of survivorship, but as property set aside by law from decedent's estate for the benefit of the surviving spouse and children. 162-230, 202+494.

**8342. Sale or removal permitted**—Notice—The owner may sell and convey the homestead without subjecting it, or the proceeds of such sale for the period of one year after sale, to any judgment or debt from which it was exempt in his hands. And he may remove therefrom without affecting such exemption, if he do not thereby abandon the same as his place of abode. But if he shall cease to occupy such homestead for more than six consecutive months he shall be deemed to have abandoned the same unless, within such period, he shall file with the register of deeds of the county in which it is situated a notice, executed, witnessed, and acknowledged as in the case of a deed, describing the premises and claiming the same as his homestead. But in no case shall the exemption continue more than five years after such filing, unless during some part of said term the premises shall have been occupied as the actual dwelling place of the debtor or his family. (3458) [6963]

**1. Sale and removal**—The statute does not have the effect of rendering actual occupancy as a home unnecessary; it simply authorizes temporary removal after a homestead has been acquired by actual occupancy as a home (15-116, 87; 29-18, 11+119; 35-280, 28+510; 47-13, 49+390). A conveyance of a homestead vests a good title in the grantee (25-305; 71-108, 73+639), even though it was made with a fraudulent intent (27-116, 6+455; 27-156, 6+618; 28-77, 9+172; 28-544, 11+77; 40-193, 41+103T; 89-247, 94+677). Prior to Revised Laws, garnishment reached money owing by garnishee derived from sale of homestead of defendants, and which defendants intended at time of service of garnishee summons to use in purchase of another homestead within one year from time premises were sold (97-484, 107+159).

**2. Notice of claim—Abandonment**—If an owner removes from and ceases to occupy his homestead for more than six months without filing the notice required by this section his homestead right ceases although he may have removed with the intention of returning and resuming his occupancy at some future time. To recover the right there must be a resumption of actual occupancy. Filing notice is effective to preserve the right only when there is an intention to return and occupy as a home (38-308, 37+340; 40-172, 41+1059; 47-13, 49+390; 50-264, 52+862). This section does not preserve the right for six months absolutely. If a party leaves his homestead with the intention of never returning his exemption right ceases at once regardless of whether he has filed a claim or not (29-18, 11+119; 35-280, 28+510; 71-108, 73+639; 84-468, 87+1024). A party may remove from his homestead for a period of six months with impunity although he does not file the statutory notice, if he intends to return (38-303, 37+340). Evidence of an abandonment must be clear and convincing (31-197, 17+336; 39-193, 39+141; 71-108, 73+639). Held insufficient (106-442, 119+60). The burden of proving a filing of notice rests on the claimant (50-264, 52+862). The domicile of the husband is the domicile of the wife. If he leaves the homestead with the intention of not returning there is an abandonment regardless of the intention of the wife (35-280, 28+510; 84-468, 87+1024. See 25-183; 40-172, 41+1059). To constitute an abandonment there must be an actual removal from the premises. An intention to remove is insufficient (31-197, 17+336). The acquisition of a new homestead works a forfeiture of the old one (29-18, 11+119). Where there has been a loss of exemption by abandonment a resumption of occupancy as a home does not have a retroactive effect, but merely gives a new right as of the date of the resumption (71-108, 73+639). Where a homestead right is lost by removal and failure to file the statutory notice the premises do not pass to the surviving spouse under ch. 74 (40-172, 41+1059). An outstanding interest is not a thing separate from the land so that its acquisition by the claimant affects the exemption (27-406, 7+324). Removal without abandonment (217 Fed. 168). Failure to file notice (138-405, 165+235; 142-36, 170+708). Not a homestead (152-163, 188+316; 217 Fed. 169; 206 Fed. 877).

As against an attachment, a claim to a homestead, made by a debtor who failed to file the notice cannot be sustained unless it appears that, within 6 months immediately preceding the levy, the debtor actually resided in and occupied the dwelling house. 163-294, 204+38.

The evidence supports a finding of abandonment of a homestead. 167-489, 209+636.

A man's intentions are not necessarily determined by his declarations; his conduct must be considered as well. 210+87.

The fact that within six months after his removal from his homestead the owner registered as a voter in the city to which he removed does not establish conclusively that he had changed his place of residence. 210+87.

When homestead rights are acquired, they are presumed to continue until it is shown by clear and convincing evidence that they have been abandoned. 210+87.

The owner may sell and convey his homestead without subjecting it to the lien of a judgment from which it was exempt in his hands, and may remove therefrom without affecting the exemption, if he does not thereby abandon the homestead as his place of abode. 210+87

The evidence supports a finding that a homestead had not been abandoned. 213+537.

**8343. Selection after levy**—If the premises so owned and occupied by the debtor or claimed under him by another as exempt shall exceed the area herein prescribed, and the homestead shall not have been set apart as such and its boundaries defined, an attachment or execution may be levied upon the whole. Thereupon the person entitled to the benefits of such exemption shall deliver to the officer making said levy a description of the part claimed as exempt, and the remainder only shall be subject to the levy so made. (3459) [6964]

A sale of the whole of a tract including a homestead is void as to the whole if no selection is made, either by the officer or the claimant (25-183; 27-156, 6+618; 30-84, 14+364; 30-259, 15+118; 31-213, 17+341; 36-338, 31+353; 37-208, 34+23; 91-482, 93+463). A selection is conclusive if voluntarily made by the claimant (see 78-295, 50+1127).

Within the statutory time after the levy of the executions the plaintiffs presented to the sheriff their selection of a homestead. It was ignored. It is held that the defendants cannot contest the selection made. 162-176, 202+711.

In an action to set aside a mortgage foreclosure sale upon the ground that the sheriff sold the mortgaged land, which included the homestead of the plaintiff, ignoring his claim that the land other than the homestead be first sold, the complaint is held not to state a cause of action against the sheriff. 162-311, 202+723.

**8344. Selection, how made**—Such selection shall embrace the site of the dwelling and its appurtenances, shall be compact in form, and shall be so made as not unreasonably to affect the value of the remaining part. If the selection be not made within twenty days after notice of the levy, or if, when made, it be not satisfactory to the creditor procuring such levy, the sheriff shall cause such homestead to be set apart by a survey, beginning at a point designated by the claimant, or, if no such designation be made, at such point as the sheriff shall direct, and the cost of such survey shall be added to the debt and paid out of the proceeds of sale. (3460) [6965]

The selection must be reasonable and the tract carved out regular and compact in shape. The dwelling-house and appurtenances must be included (61-238, 63+632. See 70-546, 73+842). It will be presumed that an officer making a selection discharged his duty (91-482, 92+463). 162-176, 202+711, notes under §§ 8336, 8343.

CHAPTER 67

CHATTEL MORTGAGES AND CONDITIONAL SALES

Chattel Mortgages, §§ 8345-8359.

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CHATTEL MORTGAGES

**8345. Mortgages, when void**—Every mortgage of personal property shall be void, as against the creditors of the mortgagor and subsequent purchasers and incumbrancers of the property, in good faith, unless it appears that such mortgage was executed in good faith, and not for the purpose of hindering, delaying, or defrauding any creditor of the mortgagor, and unless, in addition thereto, the giving of such mortgage is accompanied by immediate delivery, and followed by actual and continued change of possession of the mortgaged property, or, in lieu thereof, the mortgage is filed as hereinafter provided. (3461) [6966]

½. In General.

166-58, 206+948.  
Held, that lease could not be construed as creating a chattel mortgage but only as an attempt to create a pledge; that the lessor had no lien thereunder until he took possession of the grain; and that the claim under a chattel mortgage given by the tenant before the lessor took possession was superior to the claim under the lease. 158-100, 196+935.

Action in replevin for possession of property claimed under a chattel mortgage. The finding that the mortgage never became operative or binding is sustained by the evidence. 159-149, 198+412.

A drive belt used in connection with a steam threshing outfit held to be an entirely distinct and independent article of manufacture from the engine, separator, or other parts of the outfit. 159-163, 198+401.

As a general rule, to include after-acquired property in a chattel mortgage, the intent so to do must be expressed by words in the instrument. 159-163, 198+401.

Powers of bank and officers. 162-118, 202+338.

A debtor may lawfully give a preference to one creditor over others, and an intention to give such a preference does not constitute a purpose to hinder, delay, or defraud creditors. 165-317, 206+440.

An agreement between the owner of personal property

1940 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1940)  
(Superseding Mason's 1931, 1934, 1936 and 1938  
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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*Assisted by*  
**The Publisher's Editorial Staff**

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1940

providing for the registration thereof; and providing penalties for violation thereof," may not be sufficient to cover the opening sentence of this section with respect to sanitation.

Department may require registration of dairy containers from other states found in milk plants in this state. Op. Atty. Gen., Oct. 2, 1933.

**8335-3. Violations—penalties.**—Any person or persons who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before a court having jurisdiction in such cases, shall be fined for each and every offense in the sum of not less than fifteen dollars nor more than one hundred dollars. (Act Apr. 25, 1931, c. 366, §3.)

Where inspector of department of agriculture, dairy and food filed complaint under this act, fine imposed was properly remitted to county treasurer. Op. Atty. Gen., July 9, 1932.

Fines collected for violation of this act should be paid into the county treasury and not into the state treasury. Op. Atty. Gen. (135a-4), Aug. 3, 1934.

**8335-4. Commissioner of agriculture to enforce act.**—The agriculture, dairy and food commissioner of the state is charged with the proper enforcement of all of the provisions of this act. (Act Apr. 25, 1931, c. 366, §4.)

**8335-5. Effective June 1, 1931.**—This act shall take effect and be in force from and after June 1, 1931. (Act Apr. 25, 1931, c. 366, §5.)

#### COMMON LAW DECISIONS RELATING TO TRADE-MARKS AND TRADE-NAMES IN GENERAL

##### 1. In general.

Evidence held to sustain holding that name "De Guile" was a trade-name. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

A trade-name is not strictly a trade-mark, but is generally governed as to its use and transfer by the same rules as a trade-mark. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

##### 2. Unfair competition.

Evidence held not to show any unfair competition in use of trade-name. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

Unfair competition—radio broadcast of dispatches taken from newspapers. 19MinnLawRev322.

Extension of doctrine of unfair competition in broadcasting of sporting events. 23MinnLawRev395.

False and misleading advertising as unfair competition. 22MinnLawRev522.

##### 3. Sale and transfer.

The sale or transfer of the property and good will of an established and going business includes trade-names and trade-marks used in that business, unless the contrary is shown. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

In the absence of restrictive covenants, the vendor of an interest in a partnership business and good will may engage in a rival business and solicit trade by lawful and fair means, but may not privately solicit the customers of the former partnership. Gibbons v. H., 185M290, 240NW901. See Dun. Dig. 4046.

Provision in partnership agreement between medical men not to engage in practice in limited territory for 5 years after withdrawal from partnership is valid. Shaleen v. S., 188M290, 246NW744. See Dun. Dig. 4046, 8436.

On sale of good will of a business establishment limitation as to both time and place is unnecessary, if agreement in other respects is reasonable, and not in conflict with public policy or general welfare. Peterson v. J., 204M300, 283NW561. See Dun. Dig. 4046, 8436.

Covenant not to compete in business entered into for mutual business advantages of parties thereto adds to good will of business and may be transferred with it and as a part thereof. Id. See Dun. Dig. 4046, 8436.

Where an established business has been sold with its good will and there is a valid covenant not to compete in certain territory, breach is regarded as controlling factor and injunctive relief follows almost as a matter of course. Id. See Dun. Dig. 4046, 8436.

## CHAPTER 66

### Homestead Exemption

#### 8336. Dwelling place exempt—Exceptions.

Overvoid v. N., 186M359, 243NW439; notes under §8719.

##### 1. Nature.

Judgment for an amount loaned for the purchase of a homestead upon husband's fraudulent promise to give a mortgage on the homestead after acquired, cannot be declared a lien on the homestead. 171M431, 214NW467.

There was a violation of a promise of future action rather than of an existing duty and so is not one for the imposition of a lien to enforce a trust ex maleficio. 171M431, 214NW467.

Use by brothers, joint tenants, of a farm for partnership farming did not destroy their homestead rights therein. 172M200, 214NW793.

The Fraudulent Conveyance Act (Chapter 415, Laws 1921) did not modify or repeal any part of the homestead law. 173M576, 218NW108.

A summer cottage, fully furnished for housekeeping and living and having heating and kitchen coal stoves so that it may be lived in during winter, may be claimed and held as a homestead. Gussman v. R., 190M153, 251NW18. See Dun. Dig. 4207.

A judgment lien on real property is not defeated by a homestead right acquired by judgment debtor after docketing judgment. Rusch v. L., 194M469, 261NW186. See Dun. Dig. 4196.

That one of cotenants claims a homestead exemption in his undivided interest does not prevent a partition sale of property which cannot be divided without great prejudice to owners. Smith v. W., 195M589, 263NW903. See Dun. Dig. 4201.

"Homestead" in tax classification statute means abode of owner without limit as to acreage or lots. Op. Atty. Gen., Nov. 7, 1933. Opinion of Oct. 18, 1933, is withdrawn.

Personal property tax judgment is not a lien against judgment debtor's statutory homestead. Op. Atty. Gen. (421a-9), Sept. 14, 1934.

Where homestead is disposed of by will which does not otherwise provide and in all cases where homestead descends to spouse or children or issue of deceased children, homestead of deceased recipient of old age assistance is not subject to claims of county or state agencies. Op. Atty. Gen. (521-3), Apr. 6, 1936.

Claim of county for money paid as assistance against state of deceased recipient is same as claim of common creditor and is not preferred. Op. Atty. Gen. (521g), Apr. 16, 1936.

Homestead of old age assistance recipient is exempt after his death, though he leaves only adult children. Op. Atty. Gen. (521p-3), July 28, 1938.

##### 3. Actual occupancy as home essential.

Restatement of conflict of laws as to domicile and Minnesota decisions compared. 15MinnLawRev668.

##### 5. No limitation on use.

Illegal use and occupancy of a homestead does not render it subject to sale on execution. Ryan v. C., 185M347, 241NW388. See Dun. Dig. 4207.

##### 8. Debts due laborers or servants.

An award under the Workmen's Compensation Act is not a "debt incurred to any laborer or servant for labor or service performed," within the meaning of Const. art. 1, §12, and is not a lien upon the employer's homestead. 175M161, 220NW421.

Constitutional provision does not create liability against the homestead of one who is not the master or employer of the laborer or servant although he has by some collateral contract with the employer made himself liable for the payment of the debt. 175M389, 221NW534.

"Any debt incurred to any laborer or servant for labor or service performed," does not include a claim by an automobile salesman for unpaid wages and commissions earned while an employee of the homestead owner. Fletcher v. S., 201M609, 277NW270. See Dun. Dig. 4209.

##### 12. Mortgage foreclosures.

Where former owners of a homestead remain in possession thereof after their title has been divested by the foreclosure of a mortgage thereon, and, while so in possession, the holder of the title conveys to the wife of one of such persons upon the promise of such wife and husband to execute a mortgage for the balance of the purchase price, equity will enforce performance of such promise by decreeing a vendor's lien for such balance superior to any homestead right in the land. Hecht v. A., 204M432, 283NW753. See Dun. Dig. 4205.

##### 13. Selection by bankruptcy court.

Lien of a judgment procured less than four months preceding filing of petition in bankruptcy is annulled thereby, even as to homestead set aside as exempt. Landy v. M., 193M252, 258NW573. See Dun. Dig. 741.

##### 14. Alienation.

An oral agreement made by one spouse, while both are living, to give a mortgage on the family homestead, is not merely voidable, but is wholly void under our

homestead laws. *Kingery v. K.*, 185M467, 241NW583. See Dun. Dig. 4211(7).

Son advancing money to mother to pay in part mortgages on family homestead upon which mother and father resided was not entitled to subrogation to rights of mortgagees or to any lien upon the homestead, though mother orally promised to give mortgage. *Kingery v. K.*, 185M467, 241NW583. See Dun. Dig. 9037(12).

#### 15. Estoppel to claim.

That plaintiff's husband, a year before judgment was obtained against plaintiff, went through bankruptcy in another state and in his petition stated his residence to be in that state, was not conclusive against plaintiff claiming homestead in state. *Gussman v. R.*, 190M153, 251NW18. See Dun. Dig. 2817.

Rule that husband has right to fix domicile of family has no special application where it is shown that husband has not determined or fixed any domicile either for himself or for his family. *Id.* See Dun. Dig. 2817.

#### 8337. Area, how limited.

The words "within the laid-out or platted portion" mean that the land in question, though surrounded by platted land, must itself be laid out or platted actually or by some act equivalent to a laying out or platting. *Mintzer v. S.*, 45M323, 47NW973. See Dun. Dig. 4218.

The word "lot" in the former statute meant a city lot according to a survey and plat, and is not synonymous with "tract" or "parcel." *Wilson v. P.*, 28M13, 8NW830. See Dun. Dig. 4204.

#### 8338. Existing exemption not affected by changes.

Unplatted homestead cannot be reduced in area by extension of city limits to include it and by the laying out or platting of contiguous and surrounding lands owned by others. *Baldwin v. R.*, 39M244, 39NW321. See Dun. Dig. 4218. See, also, 51M316, 53NW711; 61M170, 63NW490; 68M484, 71NW672; 69M24, 71NW919.

#### 8339. Title may be in husband or wife—Equitable title exempt.

*Kingery v. K.*, 185M467, 241NW583; note under §8340.

#### 8340. No alienation without consent of spouse—Exceptions.

Surviving wife is entitled to proceeds of sale of homestead where same was sold in fraud of her marital rights, and where such proceeds were used to purchase an annuity for husband to defeat wife's marital rights in such proceeds, in which plan insurer participated, wife is entitled to follow proceeds so used. *Maruska v. E.*, (USDC-Minn.), 21FSupp841.

Use by joint tenants of a farm for partnership farming did not destroy homestead rights therein, where the wife of one of them refused to join in a conveyance of the farm to the partnership. 172M200, 214NW793.

On foreclosure mortgage covering a homestead, and land conveyed to a purchaser by the mortgagor's trustee in bankruptcy subject to existing liens, the judgment correctly directed the land sold by the trustee to be first subjected, and the homestead last. 172M529, 215NW850.

Where the wife does not sign a contract to convey the homestead the contract is a nullity, but a broker may recover a commission from the husband, there being a presumption that he can perform his contracts. 179M42, 228NW339.

Son advancing money to mother to pay in part mortgages on family homestead upon which mother and father resided was not entitled to subrogation to rights of mortgagees or to any lien upon the homestead, though mother orally promised to give mortgage. *Kingery v. K.*, 185M467, 241NW583. See Dun. Dig. 9037(12).

An oral agreement made by one spouse, while both are living, to give a mortgage on the family homestead, is not merely voidable, but is wholly void under our homestead laws. *Kingery v. K.*, 185M467, 241NW583. See Dun. Dig. 4211(7).

Husband's signature as witness on new contract for deed to wife did not constitute estoppel to claim that surrender back of former contract was invalid without husband's signature. *Craig v. B.*, 191M42, 254NW440. See Dun. Dig. 3179(83), 4211.

Equitable interest of a vendee under a contract for deed cannot be alienated without signature of other spouse where land covered by contract is occupied by vendee as a homestead. *Id.*

So strong is the public policy behind homestead statute that, where it appears that one spouse has attempted to alienate an interest in homestead without other's consent, supreme court can, on its own motion, assert this defense even though not properly pleaded or even though raised for first time on appeal. *Id.*

Conveyance by one spouse to other spouse through medium of a third party is valid, but an executory agreement between spouses to make such a conveyance would be invalid. *Simmer v. S.*, 195M1, 261NW481. See Dun. Dig. 4282.

#### 8341. Exemption not lost by death or desertion.

Upon death of spouse holding fee title to homestead surviving spouse takes homestead right not by right of survivorship, but as property set apart by law for benefit of surviving spouse or children. *Maruska v. E.*, (US DC-Minn.), 21FSupp841.

#### 8342. Sale or removal permitted.

##### 1. Sale and removal.

Finding against abandonment of homestead held sustained by the evidence. 172M200, 214NW793.

##### 2. Notice of claim—Abandonment.

No "abandonment" of wife's homestead results from fact that husband makes a lease thereof to third party, not joined in or authorized by wife. 173M576, 218NW108.

There is no "abandonment" of a homestead until the owner removes therefrom and ceases to occupy the same as his home, intention to remove therefrom at some future time not being sufficient. 173M576, 218NW108.

The homestead tax reduction law does not follow the same rules as the homestead exemption law, that the six months' absence period of the homestead exemption law does not apply to the tax law, and that the filing of a notice claiming property under the homestead exemption law will not extend the period of permissible absence to five years. *Op. Atty. Gen.* (414a-9), Aug. 7, 1934.

For purposes of taxation, a person is not entitled to homestead classification of a place in which he does not reside, even though he files a notice of homestead, and maintains furniture in one room. *Op. Atty. Gen.* (408d), June 2, 1936.

## CHAPTER 67

### Chattel Mortgages and Conditional Sales

#### CHATTEL MORTGAGES

##### 8345. Mortgages, when void.

###### ½. In general.

A conditional sale of stock of merchandise under which buyer is permitted to retain possession and to sell from and replenish the stock is valid. In re *Horwitz*, (USDC-Minn.), 32F(2d)285.

A chattel mortgage covering a stock of merchandise under which mortgagor is permitted to retain possession and to sell from and replenish the stock is fraudulent as a matter of law and void as to creditors. In re *Horwitz*, (USDC-Minn.), 32F(2d)285.

Judgment of state court as to validity of transfer, held conclusive in bankruptcy court. In re *Ruthkowski*, (USDC-Minn.), 39F(2d)969.

Where a tenant in possession installed a hot air furnace in the basement of a dwelling house, under a conditional sales contract, and the owner of the realty knew of and consented to such installation, although he did not know that there was a conditional sales contract, and such furnace and attachments can be removed without material injury to the building, the furnace and attachments did not become a part of the realty as between the seller and the owner, and may

be removed by the seller on default in payments. 173M121, 216NW795.

Evidence held not to require finding that plaintiff authorized or acquiesced or ratified giving of mortgage. 173M166, 216NW801.

In replevin for lunch counter outfit under chattel mortgage given for balance of purchase price, defense of fraudulent misrepresentation held sustained by evidence. 173M443, 217NW505.

G. S. 1923, §8345, does not apply to general creditors, but to such as are armed with process or to a receiver representing creditor and vested with the right to attack. 175M47, 220NW400.

Findings in civil suit, held inadmissible in criminal prosecution. 180M378, 230NW818.

Tenant permitting third party under authority from landlord to cut wood and pile it on railroad right of way had no title which he could mortgage. *Morrow v. P.*, 186M516, 243NW785. See Dun. Dig. 1427(85).

Transaction evidenced by a trust receipt, and acceptance of a time draft held a chattel mortgage upon automobiles named in trust receipt. *McLeod Nash Motors v. C.*, 187M452, 246NW17. See Dun. Dig. 1425.

Junior chattel mortgagee held not entitled to recover in conversion by reason of private sale of chattels for purpose of paying debts. *Carity Motors v. E.*, 189M310, 249NW190.